

**SHOREVIEW PLANNING COMMISSION
MEETING MINUTES
May 25, 2010**

CALL TO ORDER

Chair Proud called the meeting of the May 25, 2010 Shoreview Planning Commission to order at 7:00 p.m.

ROLL CALL

The following members were present: Chair Proud; Commissioners Feldsien, Ferrington, Mons, Schumer and Wenner.

Commissioner Schumer arrived at 8.14 p.m. for consideration of the second application.

Commissioner Wenner was absent.

APPROVAL OF AGENDA

MOTION: by Commissioner Solomonson, seconded by Commissioner Ferrington to approve the agenda as submitted.

VOTE: Ayes – 5 Nays – 0

APPROVAL OF MINUTES

MOTION: by Commissioner Mons, seconded by Commissioner Feldsien to lay over approval of the minutes of the April 27, 2010 Planning Commission meeting to the June meeting, as the minutes were not received in packets and Commissioners have not had an opportunity to review them.

VOTE: Ayes - 5 Nays - 0

REPORT ON CITY COUNCIL ACTIONS

City Planner Nordine reported that the City Council approved the following:

- 1) Text amendment to allow falconry, which was approved as recommended by the Planning Commission; and
- 2) Site and Building Plan Review for an expansion of the Data Center for Wells Fargo.

OLD BUSINESS

VARIANCE

FILE NO.: 2373-09-31
APPLICANT: ROBIN RAYGOR
LOCATION: 444 MAPLE LANE

Presentation by City Planner Kathleen Nordine

This application was considered by the Planning Commission at its October 27, 2009 meeting, when it was tabled to the November meeting. However, the item was not reconsidered because the applicant was unable to attend the meeting in November.

The variance request is to reduce the 5-foot side yard setback for his driveway to 3 feet. He also requests a variance to be able to park a recreational vehicle within the 5-foot side and front setbacks. The driveway was expanded to provide a surface to park the recreational vehicle. The expanded asphalt portion is within 3 feet of the side property line. The gravel portion extends to the property line. The applicant states that he plans to change the gravel portion into a planting bed with landscape rock so the driveway surface would have a setback of 3 feet. This is where the recreational vehicle would be parked to allow access to the garage with passenger vehicles.

The applicant states that there is hardship due to the character of the neighborhood. The neighborhood is an older lakeshore area with non-conforming lots, structures and driveways. It is an accepted practice to park boat trailers, recreational vehicles, utility trailers within 1 to 3 feet of a property line. Parking within the City's setback requirement will create inability to access the garage and park passenger vehicles. The variance will have a negligible effect. His property is 97 feet in width because 3 feet was divided off for the adjacent neighbor to have more building area. If his property had been maintained its original width of 100 feet, no variance would be needed.

Staff finds that the applicant has reasonable use with the existing home, garage and driveway. Inconvenient access to the garage is not a basis for hardship. The required 5-foot setback minimizes intrusion on neighboring properties. The driveway dimensions of 18 feet in width and 40 feet in length is sufficient for parking needs, including a recreational vehicle. The circumstances are not a result of the property configuration but are created by the applicant. Options available would be to expand the driveway to the east, but the applicant has indicated that would interfere with landscaping. There is also the option of parking the RV off-site. It is true that the neighborhood has non-conforming characteristics, but that does not create hardship.

Notices were sent to property owners within 350 feet of the applicant's property. The majority of responses support the application; a few are in opposition.

It is staff's recommendation to not approve the variance. Should the Commission find otherwise, hardship findings must be identified. A motion to approve is included in the Staff report with conditions to convert the western 3 feet of the existing Class 5 gravel surface to lawn space or a

landscaped planting bed. The applicant would like to put in landscape rock, but staff does not want the area to be easily driven on.

Commissioner Solomonson asked if the applicant would have to remove the asphalt portion of the driveway if the variance is denied. Ms. Nordine explained that the asphalt portion would have to be retrofitted to comply with the required setback. Commissioner Solomonson noted that adjacent neighbors at 457 and 447 have rear setbacks of almost zero. Setbacks are varied and non-conforming and that would be justification for the variance. Ms. Nordine stated that all three criteria for a variance must exist to grant the variance: 1) the property cannot be put to reasonable use; 2) hardship is due to unique circumstances of the property not created by the property owner; and 3) the variance will not alter the essential character of the neighborhood.

Commissioner Mons stated that parking of vehicles on front driveways is allowed, but parking of oversized recreational vehicles were not addressed. He noted that there are other areas in the City where RVs are parked not in compliance, but absent a complaint, the City takes no action. Ms. Nordine agreed that City enforcement is complaint driven, but the SHINE program operating in certain neighborhoods of the City enforces Code requirements. This issue is a result of a complaint.

Commissioner Mons asked if there is no complaint but information is submitted about non-conformance, how does the City handle. City Attorney Filla stated that the City enforcement program is complaint driven with exception of the SHINE Program. There have been times when staff has taken enforcement action with no complaints but this is not the general policy. The City should enforce regulations uniformly.

Commissioner Solomonson noted that with the 3 feet given to the property to the west for that property's main structure, a variance must have been granted for it to be so close to the property line. Ms. Nordine stated that the file does not show a variance was granted. Mr. Warwick stated that he believes the three feet was to address an encroachment of the garage. Surveys were not required and often structures were built according to property lines owners attested to. Commissioner Solomonson stated that the circumstance of the addition of the three feet to the adjacent property created hardship for the applicant, not the applicant himself.

City Attorney Filla stated that most likely at some point a survey was done, and it was found that the garage was encroaching. The easy solution was for the adjacent property to convey three feet to address the issue. Years ago county recorders were not accurate about recording conveyances only after approval of the City.

Commissioner Solomonson stated that the 3 feet is a unique circumstance to this property and not created by the current property owner.

Commissioner Ferrington stated that the 40-foot driveway does not allow parking the 35-foot RV without encroachment into the 5-foot front setback.

Mr. Robert Raygor, Applicant, stated that he has parked an RV in his driveway for many years. Since the 3-foot conveyance to his neighbor, a rain gutter has been installed, which does

encroach into the setback. However, that neighbor has been very supportive of his application as his driveway abuts the rear lot line of his neighbor whose house faces west. It is common practice to park vehicles on the lawn and up to property lines because that is the only space available. In order to comply, he must remove a ladder on the RV and the hitch plus the fact that it blocks half of his garage, which he thought would be hardship. His primary concern is not having to remove any portion of the asphalt driveway. He does not believe anyone who is complaining cares where the RV is exactly. Visually, the RV is less obtrusive when it is moved over. He has had a petition signed by 35 neighbors in support of his request. Two photos he distributed show where the RV is when it is parked in compliance and one where it is parked to the side.

Commissioner Ferrington asked the distance from the bumper to the street when it is parked in compliance. **Mr. Raygor** estimated about 8 feet. The RV is parked in the driveway approximately four months of the year.

Chair Proud opened discussion to public comment.

City Attorney Filla stated that the Commission has the authority to table, grant or deny the request in accordance with the ordinance upon a majority vote of its membership. That means four votes. When the City Council decided to allow the Planning Commission to have final authority on variances, it was decided that a supermajority would apply. If there are not four votes, the matter could be tabled, or it would be sent to the City Council with no recommendation.

Commissioner Solomonson stated that there are two variances and suggested separating them. Ms. Nordine stated that the two variances are related and she does not see how they can be separated.

Commissioner Mons stated that the one letter in opposition is disagreeing with the parking of the vehicle, but the City does not prohibit parking of RVs in driveways.

City Attorney Filla stated that the City defines RV as a vehicle used for temporary occupancy, such as campers, mobile homes, pickup trailers, travel trailers, tent trailers. The Code also states that RVs can be parked in front driveways as long as they are 5 feet from the adjacent side lot line and 5 feet from the front property line. The front property line does not coincide with the improved surface of the roadway. There could be more or fewer than 5 feet. It cannot be assumed that the front property line is the pavement of the street. Ms. Nordine stated that without a survey staff determined the driveway to be 40 feet in length and that there is 4 feet from the front property line to the curb of the street.

Chair Proud stated that he believes the issue is the size of the RV being parked, which is a factor created by the applicant and not hardship.

Commissioner Mons stated that the applicant has provided a significant amount of photographs

to show that there are a number of RV violations in this neighborhood that are defined by type of vehicle, not by size. He does not see a clear decision and believes that granting a variance would set a precedent for other neighborhoods. The ordinance is a set of standards to apply. He might be inclined to grant the side setback variance but not the front setback which does not address all the concerns. Variances should be granted sparingly and only when there is an overwhelming reason. There is almost an assumption that if there is a majority of residents who support the variance, the Planning Commission should grant it. He disagrees. The Commission needs to decide according to the ordinances and for the majority of the City.

Commissioner Solomonson stated that he does believe there is hardship with reasonable use because of the configuration of the neighborhood. There is hardship with the 3 feet that were conveyed to the neighbor. This is a reasonable use of the property. The character of the neighborhood would not be changed with these variances. The neighbor has zero foot rear setbacks, which is unique, and the neighborhood is old with non-conforming lots. Current City Codes do not apply in many instances. A variance here would not apply to other neighborhoods. He would support a 3-foot side setback. An RV can or cannot be parked depending on whether it fits.

Chair Proud stated that there is no evidence to show that the conveyance of 3 feet was forced. Generally, conveyance is a voluntary matter between individuals. The size of the vehicle is not a factor of hardship but is caused by the applicant.

Commissioner Feldsien stated that he is leaning toward denial because of concerns about parking closer to the lot line than what is provided in the ordinance. He agreed with Commissioner Mons that this approval could set precedence.

Commissioner Ferrington stated that this driveway is wide for access to a double garage. There is room to park two cars side by side, except for the situation created by the owner. Although she understands the concern of having to tear up asphalt, she agreed that this decision does set precedence, and consideration must be given to the rest of the community.

Chair Proud stated that the applicant is not willing to move the driveway to the east because of disturbance of landscaping. Another issue is that without a survey, the front property line is not accurately established. He would support denying the application.

Commissioner Mons asked if the entire application must be voted up or down, or if it is possible to approve one variance but not both. City Attorney Filla responded that the vote must be on the application, which is for two variances.

MOTION: by Commissioner Mons, seconded by Commissioner Solomonson to deny the variance request submitted by Robin Raygor, 444 Maple Lane, reducing the required 5-foot side yard setback for a driveway to 2 feet and permit the parking of a vehicle 3 feet from the side property line and within the required 5-foot setback from the front property line based on the finding hardship is not present. The applicant has reasonable use of the property with the existing single-family home, garage and driveway. There are no unique

characteristics of the property and the variance is created by the applicant's storage needs. The granting of the variance does not uphold the spirit and intent of the ordinance.

Discussion:

Commissioner Solomonson noted that the references to 2 feet should be 3 feet. Commissioner Mons accepted this technical correction.

VOTE: Ayes - 5 Nays - 0

NEW BUSINESS

MINOR SUBDIVISION/VARIANCE

FILE NO.: 2395-10-13
APPLICANT: GREATER METROPOLITAN HOUSING CORPORATION
LOCATION: 221 NORTH OWASSO BOULEVARD

Commissioner Mons stated that he has represented the applicant in a number of transactions and recused himself from consideration of this application to prevent any appearance of conflict of interest.

City Attorney Filla stated that it is appropriate to recuse to avoid the appearance of impropriety and conflict of interest. Recusal means to not participate.

Presentation by City Planner Kathleen Nordine

This application is to divide the property into two parcels for redevelopment as single-family residential. The current property has a lot area of 13,103 square feet and lot width of 99.86 feet. With this subdivision, the applicant, Greater Metropolitan Housing Corporation (GMHC), seeks variances to reduce the lot widths from the required 75 feet to 49.53 feet for Parcels A and B, and to reduce the minimum lot area from 10,000 square feet to 6,566 square feet for Parcel A and 6,537 square feet for Parcel B.

The existing duplex with detached garage would be demolished. The property has been vacant since October 2008, and the existing structures are in poor condition. GMHC acquired the property through foreclosure in November 2009. The proposed new homes would be a split-level design with a foundation area of approximately 748 square feet. Each home would have an attached two-car garage with driveway access off an existing alley. Redevelopment with two new homes includes green design methods of reusing 75% of the demolition materials, installation of rain gardens, use of rain barrels, bamboo hardwood floors, healthy paints and

energy efficient appliances. The homes would be marketed as “workforce housing” that would be affordable to families who earn less than the City’s median income. The value of the new homes is estimated at approximately \$200,000, which is comparable to other homes in the neighborhood.

There is an existing driveway off the alley and a second driveway off North Owasso Boulevard that is shared by the applicant’s property and 225 North Owasso Boulevard. The City is requiring that the use and maintenance of this driveway be formalized by recording an ingress/egress easement and maintenance agreement.

The applicant states that hardship exists in that the existing duplex is non-conforming and the proposed single-family use is consistent with the Comprehensive Plan land use, zoning and neighborhood. The proposed parcel sizes are not out of character with the rest of the neighborhood.

Staff believes the subdivision is reasonable, as other properties in this neighborhood are generally 6,500 square feet with lot widths of 40 to 50 feet. It is not realistic to redevelop the existing duplex into a single-family home because of its dilapidated condition. There are unique circumstances to justify the variances with the history of the property as part of the “Owasso” Plat and the non-conforming duplex use. The resulting parcels from the subdivision will be the same size and width as those platted in the “Owasso” Plat. The new homes will transform a blighted property with negative impacts to the neighborhood into two new homes that fit the scale and character of the neighborhood. Staff is recommending approval of the subdivision and variances.

Notices were sent to property owners within 350 feet of the subject property. No comments were received. The Fire Marshal reviewed the plan and stated no concerns.

Commissioner Solomonson asked how justification for the variances is based on a non-conforming structure to create two non-conforming lots. A conforming home could be built on the property, which would then also be conforming. Ms. Nordine stated that the duplex of two units is a unique circumstance and that it is reasonable to replace the duplex with two homes.

Commissioner Ferrington asked for further explanation of “work force” housing and asked if the homes would be available only to a select number of people based on income. Ms. Nordine stated that the mission of GMHC is to provide affordable housing. This would add new affordable housing in the City to help meet the benchmark for the city created by the Metropolitan Council.

Commissioner Feldsien noted that adding the 7 feet of setback would place the new homes behind adjacent structures. Ms. Nordine stated that it was not the applicant’s intent to request a front setback variance. When the survey was done, it was determined that there is space to meet the 30-foot front setback and not create a negative impact to the adjacent properties.

Commissioner Feldsien asked if the alley is owned and maintained by the City. Ms. Nordine stated that the alley is in public right-of-way. The City treats the alley as a private driveway and

does not maintain or plow it. There are agreements among the neighbors as to maintenance. In 2017, road improvements are scheduled at which time the alley would also be improved and the City would take over maintenance.

Mr. Joel Varberg, Applicant's representative, stated that he would answer questions. As to an income requirement for the housing, there are financial guidelines that are in the ranges of police, fire department and teacher salaries.

Mr. Joel Wefel, 225 North Owasso, stated that he uses the driveway referred to. He supports the proposal as it will be good for the neighborhood. His concern is the easement of the driveway. Modifications to that driveway will impact him. If 3 or 4 feet are taken, it will not work for him.

Chair Proud recommended he talk to real estate counsel to make sure his interests are represented.

City Attorney Filla asked if the easement is documented as part of his title and describes the width of driveway he is entitled to. Mr. Wefel stated that it is his understanding that he will review his own documents by June 7, 2010, when the City will meet again on this issue. City Attorney Filla asked if a copy of the documentation would be provided to the City. Mr. Wefel answered, yes.

Mr. Varberg stated that he also will provide the easement. It is not a problem.

Ms. Lila Santana, 207 North Owasso, expressed concern to keep the existing vegetative growth that keeps her property private as she purchased it. A privacy fence has been discussed and she would be interested in facilitating adding a fence. She stated that it would make sense to have the houses aligned. Ms. Nordine stated that a single-family proposal adjacent to single-family use would not require additional screening. The submitted plans show a 14-foot side setback. It looks like the vegetation is along the common boundary and she believes the applicant can work with Ms. Santana on this issue.

Mr. Varberg stated he is in total agreement with Ms. Santana and would be willing to put up a privacy fence.

Commissioner Ferrington stated that this is a reasonable use of the property and is pleased to see that the applicant is willing to work with the neighborhood. The only question is the front setback. Alignment makes sense, but it may be that balancing that with the impervious surface requirement is what needs to be done.

Commissioner Feldsien stated that there is a similar situation in his neighborhood, which is functioning very well. He supports the application.

Commissioner Solomonson stated that he does not favor the application because he cannot see creating two substandard lots when there is an opportunity to have a standard lot and put a home

on it. A non-conforming use of a duplex is being used as a basis to continue a non-conforming use. A two-dwelling unit is not pertinent. He does not agree with the stated hardship. Ms. Nordine clarified that the single-family residences would be conforming, but the lots would be non-conforming.

Commissioner Schumer stated that this is a good project, but he agrees with Commissioner Solomonson regarding hardship. The reason of hardship is economic, and that makes it difficult for him to support. Ms. Nordine stated that this application is consistent with the older neighborhood development pattern. This is a reasonable.

Chair Proud asked if the characterization of hardship as defined by staff in this instance is sustainable. City Attorney Filla stated that parts of this hardship standard is very subjective. It needs to be decided by the Planning Commission as to uniqueness of the property and not self-created.

Chair Proud stated that he supports the motion. It is a continuation of two dwelling units. He supports the addition of “work force” housing in the City.

MOTION: by Commissioner Feldsien, seconded by Commissioner Ferrington to recommend to the City Council approval of the minor subdivision application submitted by the Greater Metropolitan Housing Corporation and to adopt Resolution 10-41, approving the variance requests to reduce the lot area and widths of Parcel A and B. The approvals are subject to the following conditions:

Minor Subdivision:

1. The minor subdivision shall be in accordance with the plans submitted.
2. Public drainage and utility easements shall be dedicated to the City as required by the Public Works Director. The applicant shall be responsible for providing legal descriptions for all required easements. Easements shall be conveyed before the City will endorse deeds for recording.
3. A minimum setback of 30 feet is required for the proposed dwellings on Parcels A and B from the front property line adjacent to North Owasso Boulevard.
4. Municipal water and sanitary sewer service shall be provided to both resulting lots.
5. The applicants shall enter into a Development Agreement with the City. This agreement shall be executed prior to the City’s release of the deeds for recording.
6. Driveways and all other work within the North Owasso Boulevard right-of-way or alleyway are subject to the permitting authority of Shoreview’s Public Works Department.
7. The maximum impervious surface coverage permitted for Parcels A and B is 40%.
8. The existing driveway on Parcel A shall be modified to comply with the 40% maximum impervious surface coverage permitted. The applicant shall execute an ingress/egress easement and maintenance agreement with the property owner at

225 North Owasso Boulevard for that portion of the shared driveway remaining on Parcel A.

9. Tree removal requires replacement trees per City Code. City requirements for the tree removal and protection plan shall be detailed in the Development Agreement.
10. This approval shall expire after one year if the subdivision has not been recorded with Ramsey County.

Variance

1. This approval is subject to approval of the Minor Subdivision application by the City Council.
2. This approval will expire after one year if the subdivision has not been recorded with Ramsey County.
3. The approval is subject to a 50day appeal period.

The approval of the variance request to reduce the lot area and widths for Parcels A and B is based on the following findings of fact:

1. *The property in question cannot be put to a reasonable use under the conditions allowed by the Development Ordinance.* The redevelopment plan will result in a land use that is consistent with the City's Development Code and Comprehensive Plan and adjoining single-family residential neighborhood. The proposal to replace an existing dilapidated two-unit dwelling (duplex) with two single-family residential uses is reasonable.

2. *The hardship is created by circumstances unique to the property and was not created by the landowner.* The property has unique circumstances that justify the variance requests. These include the history of the property and nonconforming duplex use. The proposed subdivision plan results in parcels consistent with the original plat. Since the dilapidated duplex is nonconforming, the use cannot be re-established. It is not feasible to convert the structure to a single-family residential use due to its dilapidated condition.

3. *The variance will not alter the essential character of the neighborhood. The proposal will not alter the character of the neighborhood.* The replacement of the nonconforming duplex with single-family residential uses is consistent with the surrounding single-family residential neighborhood. Other parcels in this neighborhood are of a similar size. The proposed subdivision transforms a blighted property to a use that will have a positive impact on the neighborhood.

The recommendation for approval of the Minor Subdivision is based on the following findings of fact:

1. With the approval of the lot area and width variances for Parcels A and B, the proposed lots conform to the adopted City standards for new lots.
2. The proposed subdivision complies with the City's subdivision standards.

3. The proposed land use is consistent with the planned land use identified in the Comprehensive Plan and with the Development Code.

Discussion:

Commissioner Ferrington asked if the fence and the driveway used by the property owner at 225 North Owasso need to be addressed. Ms. Nordine stated that condition No. 8 addresses the driveway. The portion of driveway to be removed is adjacent to the structure on the subject property and she does not believe it will impact the integrity of the use of the driveway for the neighbor. City Attorney Filla stated that he believes condition No. 8 should be modified to be subject to the verification of the dimensions of the existing driveway easement. He suggested adding condition No. 11 that would require the applicant to provide the City with a copy of the legal description of the property and shared driveway.

Commissioner Feldsien offered an amendment for the applicant to provide screening and/or a privacy fence on the east lot line.

Commissioner Schumer stated that he cannot agree with the small lot size. Commissioner Ferrington responded that the area has many smaller lots and this will not look out of character.

VOTE: Ayes - 3 Nays - 2 (Schumer, Solomonson)

Attorney Filla stated that a majority vote is necessary to approve the minor subdivision, but four votes are needed for the variances. This is combined as one action.

MOTION: by Commissioner Schumer, seconded by Commissioner Ferrington to reconsider the previous motion.

VOTE: Ayes - 4 Nays - 1 (Solomonson)

Chair Proud stated that the original motion as amended is now again on the table.

Commissioner Schumer stated that hardship has not been shown.

VOTE: Ayes - 4 Nays - 1 (Solomonson)

Chair Proud called a 10-minute recess and reconvened the meeting.

MISCELLANEOUS

Council Assignments

Commissioners Mons and Ferrington will respectively attend the June 7th and June 21st City Council meetings.

Workshop

The meeting adjourned for the Planning Commission to meet in a workshop session.

ADJOURNMENT

MOTION: by Commissioner Schumer, seconded by Commissioner Feldsien to
adjourn the May 25, 2010 Planning Commission meeting at 9:07 p.m.

VOTE: Ayes - 6 Nays - 0

ATTEST:

Kathleen Nordine
City Planner